

account of specified conduct related to weapons proliferation. Such statutory sanctions are not civil or criminal penalties, but restrict imports and procurement (See section 11A of the EAA, Multilateral Export Control Violations, and section 11C of the EAA, Chemical and Biological Weapons Proliferation), or restrict export licenses (See section 11B of the EAA, Missile Proliferation Violations, and the Iran-Iraq Arms Non-Proliferation Act of 1992).

(2) *Other sanctions and measures*—(i) *Seizure and forfeiture.* Items that have been, are being, or are intended to be, exported or shipped from or taken out of the United States in violation of the EAA, the EAR, or any order, license or authorization issued thereunder, are subject to being seized and detained as are the vessels, vehicles, and aircraft carrying such items. Seized items are subject to forfeiture. (50 U.S.C. app. 2411(g); 22 U.S.C. 401.)

(ii) *Cross-debarment.* (A) The Department of State may deny licenses or approvals for the export or reexport of defense articles and defense services controlled under the Arms Export Control Act to persons indicted or convicted of specified criminal offenses, including violations of the EAA, or to persons denied export privileges by BIS or another agency. (22 CFR 126.7(a) and 127.11(a).)

(B) The Department of Defense, among other agencies, may suspend the right of any person to contract with the United States Government based on export control violations. (Federal Acquisition Regulations 9.407-2.)

[61 FR 12902, Mar. 25, 1996, as amended at 62 FR 25469, May 9, 1997; 71 FR 44190, Aug. 4, 2006; 73 FR 75945, Dec. 15, 2008; 78 FR 13471, Feb. 28, 2013]

§ 764.4 Reporting of violations.

(a) *Where to report.* If a person learns that an export control violation of the EAR has occurred or may occur, that person may notify:

Office of Export Enforcement, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room H-4520, Washington, D.C. 20230, Tel: (202) 482-1208, Facsimile: (202) 482-0964

or, for violations of part 760 of the EAR:

Office of Antiboycott Compliance, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room H-6099C, Washington, D.C. 20230, Tel: (202) 482-2381, Facsimile: (202) 482-0913.

(b) *Failure to report violations.* Failure to report potential violations may result in the unwarranted issuance of licenses or exports without the required licenses to the detriment of the interests of the United States.

(c) *Reporting requirement distinguished.* The reporting provisions in paragraph (a) of this section are not “reporting requirements” within the meaning of § 764.2(i) of this part.

(d) *Formerly embargoed destinations.* Reporting requirements for activities within the scope of § 764.2(e) that involve items subject to the EAR which may have been illegally exported or re-exported to Libya prior to the lifting of the comprehensive embargo on Libya are found in § 764.7 of the EAR.

[61 FR 12902, Mar. 25, 1996, as amended at 70 FR 14391, Mar. 22, 2005]

§ 764.5 Voluntary self-disclosure.

(a) *General policy.* BIS strongly encourages disclosure to OEE if you believe that you may have violated the EAR, or any order, license or authorization issued thereunder. Voluntary self-disclosure is a mitigating factor in determining what administrative sanctions, if any, will be sought by OEE.

(b) *Limitations.* (1) The provisions of this section do not apply to disclosures of violations relating to part 760 of the EAR.

(2) The provisions of this section apply only when information is provided to OEE for its review in determining whether to take administrative action under part 766 of the EAR for violations of the export control provisions of the EAR.

(3) The provisions of this section apply only when information is received by OEE for review prior to the time that OEE, or any other agency of the United States Government, has learned the same or substantially similar information from another source and has commenced an investigation or

inquiry in connection with that information.

(4) While voluntary self-disclosure is a mitigating factor in determining what administrative sanctions, if any, will be sought by OEE, it is a factor that is considered together with all other factors in a case. The weight given to voluntary self-disclosure is solely within the discretion of OEE, and the mitigating effect of voluntary self-disclosure may be outweighed by aggravating factors. Voluntary self-disclosure does not prevent transactions from being referred to the Department of Justice for criminal prosecution. In such a case, OEE would notify the Department of Justice of the voluntary self-disclosure, but the consideration of that factor is within the discretion of the Department of Justice.

(5) A firm will not be deemed to have made a disclosure under this section unless the individual making the disclosure did so with the full knowledge and authorization of the firm's senior management.

(6) The provisions of this section do not, nor should they be relied on to, create, confer, or grant any rights, benefits, privileges, or protection enforceable at law or in equity by any person, business, or entity in any civil, criminal, administrative, or other matter.

(c) *Information to be provided*—(1) *General*. Any person wanting to disclose information that constitutes a voluntary self-disclosure should, in the manner outlined below, initially notify OEE as soon as possible after violations are discovered, and then conduct a thorough review of all export-related transactions where violations are suspected.

(2) *Initial notification*—(i) *Manner and content of initial notification*. The initial notification should be in writing and be sent to the address in paragraph (c)(7) of this section. The notification should include the name of the person making the disclosure and a brief description of the suspected violations, and should designate a contact person regarding the initial notification and provide that contact person's current business street address, email address, and telephone number. The notification should describe the general nature and extent of the violations. OEE recognizes that there may be situations where it will

not be practical to make an initial notification in writing. For example, written notification may not be practical if a shipment leaves the United States without the required license, yet there is still an opportunity to prevent acquisition of the items by unauthorized persons. In such situations, OEE should be contacted promptly at the office listed in paragraph (c)(7) of this section.

(ii) *Initial notification date*. For purposes of calculating when a complete narrative account must be submitted under paragraph (c)(2)(iii) of this section, the initial notification date is the date the notification is received by OEE. OEE will notify the disclosing party in writing of the date that it receives the initial notification. At OEE's discretion, such writing from OEE may be on paper, or in an email message or facsimile transmission from OEE, or by any other method for the transmission of written communications. Where it is not practical to make an initial notification in writing, the person making the notification should confirm the oral notification in writing as soon as possible.

(iii) *Timely completion of narrative accounts*. The narrative account required by paragraph (c)(3) of this section must be received by OEE within 180 days of the initial notification date for purposes of paragraph (b)(3) of this section, absent an extension from the Director of OEE. If the person making the initial notification subsequently completes and submits to OEE the narrative account required by paragraph (c)(3) of this section such that OEE receives it within 180 days of the initial notification date, or within the additional time, if any, granted by the Director of OEE pursuant to paragraph (c)(2)(iv) of this section, the disclosure, including violations disclosed in the narrative account that were not expressly mentioned in the initial notification, will be deemed to have been made on the initial notification date for purposes of paragraph (b)(3) of this section if the initial notification was made in compliance with paragraphs (c)(1) and (2) of this section. Failure to meet the deadline (either the initial 180-day deadline or an extended deadline granted by the Director of OEE)

would not be an additional violation of the EAR, but such failure may reduce or eliminate the mitigating impact of the voluntary disclosure under Supplement No. 1 to this part. For purposes of determining whether the deadline has been met under this paragraph, a complete narrative account must contain all of the pertinent information called for in paragraphs (c)(3), (c)(4), and (c)(5) of this section, and the voluntary self-disclosure must otherwise meet the requirements of this section.

(iv) *Deadline extensions.* The Director of OEE may extend the 180-day deadline upon a determination in his or her discretion that U.S. Government interests would be served by an extension or that the person making the initial notification has shown that more than 180 days is reasonably needed to complete the narrative account.

(A) *Conditions for extension.* The Director of OEE in his or her discretion may place conditions on the approval of an extension. For example, the Director of OEE may require that the disclosing person agree to toll the statute of limitations with respect to violations disclosed in the initial notification or discovered during the review for or preparation of the narrative account, and/or require the disclosing person to undertake specified interim remedial compliance measures.

(B) *Contents of Request.* (1) In most instances 180 days should be adequate to complete the narrative account. Requests to extend the 180-day deadline set forth in paragraph (c)(2)(iii) of this section will be determined by the Director of OEE pursuant to his or her authority under this paragraph (c)(2)(iv) based upon his consideration and evaluation of U.S. Government interests and the facts and circumstances surrounding the request and any related investigations. Such requests should show specifically that the person making the request:

(i) Began its review promptly after discovery of the violations;

(ii) Has been conducting its review and preparation of the narrative account as expeditiously as can be expected, consistent with the need for completeness and accuracy;

(iii) Reasonably needs the requested extension despite having begun its re-

view promptly after discovery of the violations and having conducted its review and preparation of the narrative account as expeditiously as can be expected consistent with the need for completeness and accuracy; and

(iv) Has considered whether interim compliance or other corrective measures may be needed and has undertaken such measures as appropriate to prevent recurring or additional violations.

(2) Such requests also should set out a proposed timeline for completion and submission of the narrative account that is reasonable under the applicable facts and circumstances, and should also designate a contact person regarding the request and provide that contact person's current business street address, email address, and telephone number. Requests may also include additional information that the person making the request reasonably believes is pertinent to the request under the applicable facts and circumstances.

(C) *Timing of requests.* Requests for an extension should be made before the 180-day deadline and as soon as possible once a disclosing person determines that it will be unable to meet the deadline or the extended deadline where an extension previously has been granted, and possesses the information needed to prepare an extension request in accordance with paragraph (c)(2)(iv)(B) of this section. Requests for extension that are not received before the deadline for completing the narrative account has passed will not be considered. Parties who request an extension shortly before the deadline incur the risk that the Director of OEE will be unable to consider the request, determine whether or not to grant the extension, and communicate his or her decision before the deadline, and that any subsequently submitted narrative account will be considered untimely under paragraph (c)(2)(iii) of this section.

(3) *Narrative account.* After the initial notification, a thorough review should be conducted of all export-related transactions where possible violations are suspected. OEE recommends that the review cover a period of five years prior to the date of the initial notification. If your review goes back less than

five years, you risk failing to discover violations that may later become the subject of an investigation. Any violations not voluntarily disclosed do not receive consideration under this section. However, the failure to make such disclosures will not be treated as a separate violation unless some other section of the EAR or other provision of law requires disclosure. Upon completion of the review, OEE should be furnished with a narrative account that sufficiently describes the suspected violations so that their nature and gravity can be assessed. The narrative account should also describe the nature of the review conducted and measures that may have been taken to minimize the likelihood that violations will occur in the future. The narrative account should include:

(i) The kind of violation involved, for example, a shipment without the required license or dealing with a party denied export privileges;

(ii) An explanation of when and how the violations occurred;

(iii) The complete identities and addresses of all individuals and organizations, whether foreign or domestic, involved in the activities giving rise to the violations;

(iv) License numbers;

(v) The description, quantity, value in U.S. dollars and ECCN or other classification of the items involved; and

(vi) A description of any mitigating circumstances.

(4) *Supporting documentation.* (i) The narrative account should be accompanied by copies of documents that explain and support it, including:

(A) Licensing documents such as licenses, license applications, import certificates and end-user statements;

(B) Shipping documents such as Shipper's Export Declarations, air waybills and bills of lading; and

(C) Other documents such as letters, facsimiles, telexes and other evidence of written or oral communications, internal memoranda, purchase orders, invoices, letters of credit and brochures.

(ii) Any relevant documents not attached to the narrative account must be retained by the person making the disclosure until OEE requests them, or until a final decision on the disclosed information has been made. After a

final decision, the documents should be maintained in accordance with the recordkeeping rules in part 762 of the EAR.

(5) *Certification.* A certification must be submitted stating that all of the representations made in connection with the voluntary self-disclosure are true and correct to the best of that person's knowledge and belief. Certifications made by a corporation or other organization should be signed by an official of the corporation or other organization with the authority to do so. Section 764.2(g) of this part, relating to false or misleading representations, applies in connection with the disclosure of information under this section.

(6) *oral presentations.* OEE believes that oral presentations are generally not necessary to augment the written narrative account and supporting documentation. If the person making the disclosure believes otherwise, a request for a meeting should be included with the disclosure.

(7) *Where to make voluntary self-disclosures.* The information constituting a voluntary self-disclosure or any other correspondence pertaining to a voluntary self-disclosure may be submitted to: Director, Office of Export Enforcement, 1401 Constitution Ave., Room H4514, Washington, DC 20230, Tel: (202) 482-5036, Facsimile: (202) 482-5889.

(d) *Action by the Office of Export Enforcement.* After OEE has been provided with the required narrative and supporting documentation, it will acknowledge the disclosure by letter, provide the person making the disclosure with a point of contact, and take whatever additional action, including further investigation, it deems appropriate. As quickly as the facts and circumstances of a given case permit, OEE may take any of the following actions:

(1) Inform the person making the disclosure that, based on the facts disclosed, it plans to take no action;

(2) Issue a warning letter;

(3) Issue a proposed charging letter pursuant to § 766.18 of the EAR and attempt to settle the matter;

(4) Issue a charging letter pursuant to § 766.3 of the EAR if a settlement is not reached; and/or

(5) Refer the matter to the Department of Justice for criminal prosecution.

(e) *Criteria.* Supplement No. 1 to part 766 describes how BIS typically exercises its discretion regarding whether to pursue an administrative enforcement case under part 766 and what administrative sanctions to seek in settling such a case.

(f) *Treatment of unlawfully exported items after voluntary self-disclosure.* (1) Any person taking certain actions with knowledge that a violation of the EAA or the EAR has occurred has violated § 764.2(e) of this part. Any person who has made a voluntary self-disclosure knows that a violation may have occurred. Therefore, at the time that a voluntary self-disclosure is made, the person making the disclosure may request permission from BIS to engage in the activities described in § 764.2(e) of this part that would otherwise be prohibited. If the request is granted by the Office of Exporter Services in consultation with OEE, future activities with respect to those items that would otherwise violate § 764.2(e) of this part will not constitute violations. However, even if permission is granted, the person making the voluntary self-disclosure is not absolved from liability for any violations disclosed nor relieved of the obligation to obtain any required reexport authorizations.

(2) A license to reexport items that are the subject of a voluntary self-disclosure, and that have been exported contrary to the provisions of the EAA or the EAR, may be requested from BIS in accordance with the provisions of part 748 of the EAR. If the applicant for reexport authorization knows that the items are the subject of a voluntary self-disclosure, the request should state that a voluntary self-disclosure was made in connection with the export of the commodities for which reexport authorization is sought.

[61 FR 12902, Mar. 25, 1996, as amended at 62 FR 25469, May 9, 1997; 69 FR 7870, Feb. 20, 2004; 70 FR 22250, Apr. 29, 2005; 78 FR 48605, Aug. 9, 2013]

§ 764.6 Protective administrative measures.

(a) *License Exception limitation.* As provided in § 740.2(b) of the EAR, all Li-

cense Exceptions are subject to revision, suspension, or revocation.

(b) *Revocation or suspension of licenses.* As provided in § 750.8 of the EAR, all licenses are subject to revision, suspension, or revocation.

(c) *Temporary denial orders.* BIS may, in accordance with § 766.24 of the EAR, issue an order temporarily denying export privileges when such an order is necessary in the public interest to prevent the occurrence of an imminent violation.

(d) *Denial based on criminal conviction.* BIS may, in accordance with § 766.25 of the EAR, issue an order denying the export privileges of any person who has been convicted of an offense specified in § 11(h) of the EAA.

§ 764.7 Activities involving items that may have been illegally exported or reexported to Libya.

(a) *Introduction.* As set forth in § 764.2(e) of this part, and restated in General Prohibition Ten at § 736.2(b)(10) of the EAR, no person (including a non-U.S. Third Party) may order, buy, remove, conceal, store, use, sell, loan, dispose of, transfer, finance, forward, or otherwise service, in whole or in part, any item subject to the EAR with knowledge that a violation has occurred, or will occur, in connection with the item. This section addresses the application of § 764.2(e) of this part to activities involving items subject to the EAR that may have been illegally exported or reexported to Libya before the comprehensive embargo on Libya ended (April 29, 2004) (“installed base” items).

(b) *Libya—(1) Activities involving installed base items in Libya for which no license is required.* Subject to the reporting requirement set forth in paragraph (b)(1)(ii) of this section, activities within the scope of § 764.2(e) of this part involving installed base items described in paragraph (b)(1)(i) of this section that are located in Libya and that were exported or reexported before April 29, 2004 do not require a license from BIS.

(i) *Scope.* An installed base item is within the scope of paragraph (b)(1) of this section if: